**IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR**

**ORDER**

**Shanker Lal Gehlot vs. State of Rajasthan & Anr.**

**(S.B.C.Writ Petition No.3768/06)**

Dated:- 5th September,2006.

**HON'BLE MR.JUSTICE MOHAMMAD RAFIQ**

Mr.P.P.Choudhary, Advocate for the petitioner.
Mr.Rameshwar Dave, Dy.Government Advocate for the respondents.

The petitioner who is working as Executive Officer has challenged his transfer order dated 15th July, 2006 whereby he has been transferred from Municipal Board, Sanchore to Municipal Board, Bilara. Challenge precisely is made on the ground that earlier to passing of the order dated 15th July, 2006, the petitioner was by order dated 8th July, 2005 transferred from Municipal Board, Mundwa to Municipal Board, Balotra. Within three days thereafter i.e. on 10th July, 2006 he was kept under awaiting posting order at Directorate of Local Bodies at Jaipur and thereafter on 12th July, 2006 he was transferred to Municipal Board, Sanchore. The petitioner acting upon of such transfer order joined at Sanchore on 14th July, 2006. The respondents however on an unfounded assumption that the order of transfer dated 15th July, 2006 has not yet been acted upon, again transferred him from Municipal Board, Sanchore to Municipal Board, Bilara. Apart from above, vide order dated 18th October, 2004 the petitioner was also transferred from Municipal Board,

Sumerpur to Municipal Board, Mundwa and within nine months thereof , he has been transferred from Municipal Board,Mundwa to Municipal Board,Nagaur. According to the petitioner, the impugned order besides being illegal, also reflects non-application of mind in issuing the same. The order of transfer indicates the petitioner “under transfer” whereas he had already joined at Municipal Board, Sanchore. Learned counsel for the petitioner has argued that once the order of transfer had been acted upon, it could not be cancelled. However in due deference to duties attached to the post held by him and the conduct rules, the petitioner faithfully complied with the order and joined at Municipal Board, Sanchore. The petitioner has placed on record another order dated 15th July, 2006 whereby certain other postings have been made and contended that no-one has so far been posted at Municipal Board, Bilara.

I have heard Mr.P.P.Choudhary, learned counsel for the petitioner and Mr.Rameshwar Dave, Dy.Government Advocate for the State and perused the record.

Mr.P.P.Choudhary, learned counsel for the petitioner argued that although State can transfer its employees depending on exigencies of service as and when required but present one is a case where power of transfer has been grossly abused in a most arbitrary manner and the petitioner has been frequently transferred to different places one after the other within a short span of time. He remained in the Municipal Board, Mundwa for a period of nine months and then was posted at Municipal Board, Nagaur on 8th July, 2005. Within three days

thereafter i.e. on 10th July, 2006 he was kept awaiting posting order at Director of Local Bodies . However two days later he was posted at Municipal Board, Sanchore. The petitioner faithfully complied the said order and joined at Municipal Board, Sanchore on 14th July, 2006. Not one day had passed, the respondent by order dated 15th July, 2006 again transferred the petitioner to Municipal Board,Bilara whereas post at Municipal Board, Sanchore was kept vacant. Even in the subsequent transfer order issued on 15th July, 2006 the post at Municipal Board, Sanchore was not filled up. Learned counsel for the petitioner has argued that frequent transfers by itself would give rise to malice on the part of the respondents. The impugned order is therefore liable to be quashed and set aside and the petitioner should be allowed to continue at Municipal Board, Sanchore.

On the other hand, Mr.Rameshwar Dave, learned Dy.Government Advocate while opposing the writ petition, placed reliance on the following judgments of the Hon'ble Supreme Court as well as of this Court:-

(1) Mrs.Shilpi Bose & Ors. vs. State of Bihar & Ors.
(AIUR 1991 S.C. p.532)
(2) P.L.Choudhary vs. The Chairman, Jodhpur Discom,Jodhpur
(2006(1) WLC(Raj.) p.581)
(3) Union of India & Ors. vs. H.N.Kirtania
(1989) 3 S.C.C. p.445
(4) Union of India & Ors. vs. Janardhan Debanath & Anr.
(2004) 4 S.C.C. p.245
(5) Union of India & Ors. vs. S.L.Abbas
(AIR 1993 S.C. p.2444)

According to Mr.Rameshwar Dave, mere transfer by itself

would not tentamount to malafides on the part of the respondents. Besides, no allegation of mala-fide has been levelled against any of the respondents or any official. He has argued that the order of transfer can be interfered with only if it is in violation of certain statutory rules or passed on account of mala-fides. None of these arguments are available to the petitioner in the present case. He therefore prayed that the writ petition may be dismissed.

It is indeed very disturbing to note from the facts of the present case that petitioner was subjected to frequent transfers one after other so much so that in the month of July itself he was subjected to four orders of transfer. Notice was issued to the respondents on 28th July, 2006 but no reply has so far been filed to justify as to what exactly was that administrative exigency which compelled them to repeatedly transfer the petitioner at such short intervals. It is of course for the government to decide as to where a particular officer is posted and when he should be transferred subject of course to administrative exigencies. No doubt the order of transfer cannot be interfered by the Court except on two well defined limitations namely either it should be actuated by mala-fides or it should be in violation of certain statutory rule. But at the same time, the facts of the present case need to be noticed at the end of the respondents themselves that subjecting the Executive Officers of the Municipal Boards to repeated transfers so frequently not only affects the moral of its officers but also effects the functioning of a local authority. This Court however does not want to interfere with the administrative working of the respondent as it is for the respondents to consider whether or not the

respondents again transfer the petitioner against the post of Executive Officer said to be still lying vacant at Municipal Board, Sanchore.

The writ petition is therefore dismissed however with liberty to the petitioner to file a representation to the respondents and the respondents are directed to consider and decide such representation of the petitioner within a period a period of 30 days from the date of receipt thereof.

**(MOHAMMAD RAFIQ),J.**